

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

**IN RE: PHARMACEUTICAL
INDUSTRY AVERAGE WHOLESAL
PRICE LITIGATION**

MDL DOCKET NO. 1456

Master File No. 01-CV-12257

Subcategory Case No. 06-CV-11337

THIS DOCUMENT RELATES TO:

Judge Patti B. Saris

U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc., et al., No. 06-CV-11337-PBS

Magistrate Judge Marianne B. Bowler

U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Dey, Inc., et al., No. 05-CV-11084-PBS; and

U.S. ex rel. Ven-A-Care of the Florida Keys,
Inc. v. Boehringer Ingelheim Corp. et al.,
No. 07-CV-10248-PBS

**PARTIALLY CONSENTED TO MOTION OF DEFENDANTS
ABBOTT LABORATORIES INC., DEY, INC., DEY, L.P., AND
DEY L.P., INC. AND BOEHRINGER INGELHEIM ROXANE,
INC. FOR LEAVE TO FILE UNDER SEAL CERTAIN
DOCUMENTS CONTAINING CONFIDENTIAL MATERIAL**

Defendants Dey, Inc., Dey, L.P., and Dey, L.P., Inc. (collectively, “Dey”), Abbott Laboratories Inc. and Boehringer Ingelheim Roxane, Inc. (f/k/a Roxane Laboratories, Inc.) (collectively, “Defendants”), by their attorneys, respectfully move this Court, pursuant to Local Rule 7.2 and the Protective Orders entered in these cases February 16, 2007, June 22, 2007, September 21, 2007, and consistent with the Court’s electronic order of May 20, 2009, for leave to file under seal the following documents:

- Supplemental Figures SA through SK to the August 28 Declaration of Lauren J. Stiroh In Support of Dey’s Motion for Partial Summary Judgment (the “Stiroh Declaration”);

- A full unredacted version of Dey's Local Rule 56.1 Statement in Response to the United States Local Rule 56.1 Statement of Undisputed Material Facts as to Dey (the "Dey Response");
- A full unredacted version of Defendants Abbott Laboratories, Dey, and Boehringer Ingelheim Roxane, Inc.'s Response to the United States Local Rule 56.1 Statement of Undisputed Material Facts Common to All Defendants (the "Common Response"); and
- Exhibits 298, 299, 301, 302, 303, 309, 323 and 324 to the Declaration of Sarah Reid in Support of Dey's Opposition to the United States' Motion for Partial Summary Judgment (the "Reid Declaration").

Concurrent with this motion, Dey will be filing the Stiroh Declaration in the public record with Figures SA-SK. These publicly filed Figures contain pricing information, including, in part, Dey's Average Manufacturer Prices ("AMPs") from January 1992 to January 2004. Consistent with the Court's May 20, 2009 electronic order allowing data from 2004 to the present to be filed under seal, Dey seeks to file under seal supplemental Figures SA-SK containing AMP information from 2004 to the present. The United States expressed its consent to Dey's filing of the Supplemental Stiroh Figures under seal.

Also concurrent with this motion, Dey will be filing a redacted version of the Dey Response, and Defendants will be filing a redacted version of the Common Response. The unredacted Dey Response and the unredacted Common Response contain citations to and quotations from the depositions of Rule 30(b)(6) designees of Cardinal Health, Inc., McKesson Corporation, and Thompson PDR, Inc, all of which have been designated as confidential by these deponents. Exhibits 298, 299, 301, 302, 303, 309, 323 and 324 to the Reid Declaration contain excerpts of the transcripts of these depositions. Defendants requested permission from these deponents' counsel to file this material publicly, but was not able to obtain their consent.

WHEREFORE, Dey respectfully requests that the Court grant Dey leave to file the full unredacted version of the supplemental Stiroh Figures (on consent), the Dey Response, and Exhibits 298, 299, 301, 302, 303, 309, 323 and 324 to the Reid Declaration under seal.

WHEREFORE, Defendants respectfully requests that the Court grant Defendants leave to file the full unredacted version of the Common Response under seal.

Dated: August 28, 2009

Respectfully submitted,

/s/ Sarah L. Reid

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CERTIFICATIONS PURSUANT TO LOCAL RULES 7.1

I, Sarah L. Reid, hereby certify that counsel for Defendants conferred with counsel for the United States regarding the issues raised in this motion on August 27 and 28, 2009. Counsel for the United States consented to the filing of the Stiroh Figures under seal, but would not consent to the filing of unredacted versions of the Dey Response, the Common Response and exhibits 298, 299, 301, 302, 303, 309, 323 and 324 to the Reid Declaration under seal.

s/ Sarah L. Reid

Sarah L. Reid

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending on August 28, 2009, a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Sarah L. Reid

Sarah L. Reid